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4 Attorney for Plaintiff

Maureen Harrington,

5 *as personal representative for the*
estate of Blaine Harrington III

6
7 IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

8 MAUREEN HARRINGTON,
AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF BLAINE
9 *HARRINGTON III,*

10 Plaintiff,

11 v.

12 DEEPAK DUGAR, M.D. a MEDICAL
CORPORATION,

13 Defendant.

Civil Action No. 2:22-cv-08230-HDV-
E

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S OBJECTIONS TO
ADMISSION OF PLAINTIFF’S
TRIAL DEMONSTRATIVES**

16 Plaintiff Maureen Harrington (“Plaintiff”), as personal representative for the
17 estate of Blaine Harrington III (“Blaine”), hereby files this response to defendant
18 Deepak Dugar, M.D., a Medical Corporation’s (“Defendant”) Objections to

1 Admission of Plaintiff's Trial Demonstratives (the "Objection") [D.E. 172], and
2 states as follows:

3 1. The Objection takes issue with fifteen (15) demonstratives that
4 Plaintiff disclosed in accordance with Local Rule 16-3 (which requires disclosure
5 of graphic or illustrative material to be shown to the trier of fact at least eleven
6 days before trial). According to the Objection, these demonstratives "should not
7 be allowed in evidence."¹ Defendant seemingly misses the point.

8 2. The demonstratives attached to the Objection are not intended to be
9 introduced into evidence at trial. They are visual aides/demonstratives that may
10 assist/focus the jury in opening/closing statements.

11 3. Without citing *any* legal authority, the Objection seeks to 'exclude'
12 these demonstratives as attempting to "influence the jury with material that is
13 irrelevant and in some instances intended to improperly manipulate the jury."²
Suffice to say, Defendant is incorrect.

14 4. "Demonstrative evidence is physical evidence that has no
15 independent probative value, but which illustrates or demonstrates a party's
16 testimony or theory of the case." GCIU-Employer Ret. Fund v. Quad Graphics,

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18 ¹ See Objection, at p. 4 ("Accordingly, the Exhibits Plaintiff has described
as 'demonstratives' should not be allowed in evidence.").

² Id. at pp. 1 – 2.

1 Inc., No. 2:16-cv-00100-ODW(AFMx), 2019 U.S. Dist. LEXIS 227501, at *10
2 (C.D. Cal. Oct. 29, 2019). “Because demonstrative evidence is simply used as a
3 testimonial aid, it is generally not admitted into the evidentiary record.” Id. (citing
4 Robert E. Jones et al., Rutter Group Prac. Guide: Fed. Civ. Trials & Ev. ¶ 8:641).

5 5. Defendant’s objections are addressed in turn below.

6 6. Defendant first objects to a collage of six (6) photographs created by
7 Mr. Harrington, arguing that it is irrelevant to any issue to be determined in the
8 case. The subject collage (page 1 of the exhibit) merely demonstrates (in visual
9 form) that, as a travel photographer, Mr. Harrington created photographs across
10 the planet (i.e., one example from Asia, North America, South America, Europe,
11 New Zealand, and Africa). It is a visual aide for introducing Mr. Harrington’s
background to the jury during opening statements.

12 7. Defendant next objects to a photograph (page 2 of the exhibit) of
13 Plaintiff, Mr. Harrington, and their two children sitting in front of a lake. Again,
14 the only purpose of this photograph is to introduce the jury to who Plaintiff and
15 Mr. Harrington are in relation to each other during opening statements.

16 8. Defendant next objects to a slide (page 3 of the exhibit) demonstrating
17 the photograph at issue in this case (P-2 on the Joint Exhibit List) together with the
18 screenshot of the photograph appearing on Defendant’s website (P-3 on the Joint
Exhibit List). Defendant does not identify any particular objection to this slide,

1 but it is difficult to imagine how such could ‘improperly influence’ the jury when
2 it simply reproduces the photograph and alleged infringement.

3 9. Defendant next objects to a slide (page 4 of the exhibit) containing the
4 names and logos of companies “which Plaintiff may intend to offer as
5 identification of companies with which Mr. Harrington had some prior
6 relationship, which is irrelevant to Plaintiff’s claim of copyright infringement.”³
7 Defendant is correct that the companies identified in this slide are each former
8 clients of Mr. Harrington’s photography services. Defendant is incorrect, however,
9 regarding relevance. Again, this slide merely illustrates Mr. Harrington’s
10 background as a professional photographer and would most likely only be used in
opening statements in introducing Mr. Harrington to the jury.

11 10. Defendant next objects to a slide (page 5 of the exhibit) which
12 illustrates various awards and accomplishments received by Mr. Harrington during
13 his professional career. The same discussion regarding page 4 of the exhibit is
14 applicable here. This slide merely illustrates Mr. Harrington’s background as a
professional photographer.

15 11. Defendant next objects to four (4) slides (pages 6 – 9 of the exhibit)
16 of proposed jury instructions that each emphasize certain portions of proposed
17 instructions. Defendant argues that these demonstratives are “inappropriate under
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³ Id. at ¶ 5.

1 any standard,”⁴ but seemingly misses the point. Pages 6 – 9 of the exhibit were
2 disclosed to Defendant in accordance with the timing mandates of Local Rule 16-
3 3. If the Court does not approve those jury instructions, then pages 6 – 9 of the
4 exhibit will certainly not be shown to the jury. If the Court does approve those
5 instructions, there is ***nothing*** inappropriate about showing the jury particular
6 instructions during closing arguments in summarizing the evidence they have
7 heard and the standards they must apply in reaching a verdict.

8 12. Defendant next objects to a slide (page 10 of the exhibit) that includes
9 allegations and the prayer for relief from Defendant’s withdrawn/abandoned
10 Counterclaim. Here, Defendant presents a litany of arguments that such is
11 irrelevant, hearsay, and intended to improperly influence the jury. Defendant is
12 incorrect. Defendant’s ‘relevance’ argument is questionable given that Defendant
13 itself has agreed to Joint Jury Instruction No. 28 (“Copyright—Damages—
14 Statutory Damages”) (D.E. 162, at p. 35) which provides, in material part: “A
15 party’s conduct and attitude during the litigation are factors that can be considered
16 by the jury in fixing a statutory damages amount.”). Indeed, conduct and attitude
17 during the litigation is one of the six factors provided to the jury in assessing
18 statutory damages. See P & P Imps. LLC v. Outugo Inc., No. SA CV 18-2029-
DOC-DFM, 2019 U.S. Dist. LEXIS 167612, at *17–18 (C.D. Cal. June 7, 2019).

⁴ Id. at ¶ 7.

1 That Defendant sued Mr. Harrington and sought monetary damages for its own
2 conduct in stealing his copyrighted work can absolutely be considered by the jury
3 in determining an appropriate award of statutory damages.

4 13. Defendant's suggestion that its own Answer/Counterclaim are
5 'hearsay' is likewise not well-taken. A party's own pleading – even one that is
6 withdrawn – is clearly a statement of a party opponent for which Fed. R. Evid.
7 801(d)(2) applies. See, e.g., Ilc Trademark Corp. v. Aviator Nation, No. CV 17-
8 7975-MWF (JPRx), 2019 U.S. Dist. LEXIS 240993, at *9 (C.D. Cal. Apr. 16,
9 2019) (denying motion in limine to exclude plaintiff's original Complaint); State
10 Farm Mut. Auto. Ins. Co. v. Porter, 186 F.2d 834, 840 n.9. (9th Cir. 1950) ("In our
11 judgment it should be presumed, where a pleading is filed by the attorney of the
12 party, that such attorney was acting within his authority, and that the pleading
13 should be regarded as the admission of the party, subject to his right to show that
14 as a matter of fact the pleading was not authorized by him.").

14 14. Defendant's own allegations in its own Counterclaim are not meant
15 to improperly influence the jury – they are unequivocally relevant to the jury's
16 consideration of statutory damages and clearly not hearsay.

16 15. Defendant next objects to a slide (page 11 of the exhibit) containing
17 Plaintiff's proposed verdict form. As with the jury instructions discussed above,
18 this slide would only be shown to the jury if the Court approves Plaintiff's

1 proposed verdict form, and then only during closing statements. It is proper for
2 the same reasons as showing/discussing the jury instructions would be proper.

3 16. Defendant next objects to a slide (page 12 of the exhibit) which
4 reproduces a portion of a pre-suit letter from an attorney who represented
5 Defendant and demanded that Mr. Harrington pay Defendant money for
6 Defendant's alleged copyright infringement. Again, Defendant does not describe
7 any particular objection here. But given that the letter appears on both Plaintiff
8 **and** Defendant's updated/amended exhibit list and does nothing more than
9 reproduce specific text therein, it is difficult to imagine how such is somehow
improper.

10 17. Defendant next objects to a slide (page 13 of the exhibit) which
11 reproduces a portion of P-26 (Defendant's "Terms and Conditions" subpage of its
12 website). This exhibit simply focuses on the copyright disclaimer portions of those
13 terms and conditions rather than the two (2) pages of text that the various terms
14 and conditions otherwise occupy. Again, it is difficult to imagine how a
15 demonstrative that accurately reproduces portions of a trial exhibit is somehow
16 improper to show the jury or how such would otherwise "improperly influence the
jury"⁵ as asserted by Defendant.

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18 ⁵ Id. at ¶ 11.

1 18. Finally, Defendant objects to two slides (pages 14 and 15 of the
2 exhibit) containing screenshots of various other city/blog pages on Defendant's
3 website that each contain (similar to the photograph at issue here) a photograph
4 associated with the subject city. As noted in the Objection, each of these (the full
5 city page) appears as an exhibit on the Joint Trial Exhibit List. Here, Defendant
6 asserts that these demonstratives are irrelevant. Again, Defendant is wrong.

7 19. Defendant's willfulness, recklessness, and/or innocence are
8 absolutely matters that are at issue in this lawsuit. Each of the city pages at issue
9 was created around the same time and serves a similar purpose – to market
10 Defendant's services to residents of such city. That Defendant engaged in the same
11 pattern of conduct – scouring the internet to copy/download photographs for each
12 of the city pages while paying no attention to who may own such photographs – is
13 certainly relevant to the aforementioned willfulness/recklessness/innocence issues
14 in this case. There is nothing improper about a demonstrative that accurately
15 reproduces matter that is already in a trial exhibit.

16 Dated: May 22, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will electronically serve all counsel of record.

/s/ Lauren M. Hausman
Lauren M. Hausman, Esq.